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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL ANGEL SEDA,

Defendant and Appellant.

2d Crim. No. B159839
(Super. Ct. No. YA048766)
(Los Angeles County)

Miguel Angel Seda appeals his convictions for three counts of first degree residential burglary (Pen. Code, § 459),¹ one count of attempted second degree burglary (§§ 664/459), and one count of assault with a deadly weapon by force likely to produce great bodily injury on a peace officer (§ 245, subd. (c)). Seda was sentenced as a third strike offender to a total of 110 years to life in state prison. Seda contends that he was denied a fair trial because evidence inferring that he was a career criminal was improperly admitted. He also claims that he received ineffective assistance of counsel and that his sentence is cruel and unusual punishment. We affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

FACTS AND PROCEDURAL HISTORY

Seda committed a series of garage burglaries in the Torrance and Redondo Beach areas of Los Angeles. On May 30, 2001, he broke into a garage attached to the residence of Brook Spector. Spector and neighbor Ada Wallace observed a black van drive by and stop in front of Spector's house. Wallace saw a heavy-set man in a baseball cap run out of the garage and drive away in the van. Because Wallace took down its license plate number, the police were able to determine that Seda was the owner of the van. Also, Spector identified Seda's van as the van stopped in front of her residence.

Armando Trejo lived in a triplex apartment with an attached garage he shared with Hector Nunez, another resident of the triplex. On July 6, Trejo saw a man wearing a baseball cap drive a dark van into the alley where the garage was located. The garage door lock was cut or broken, and Trejo saw the man load two bicycles belonging to Nunez into the van and drive away. Later, the police discovered one of the bicycles in Seda's backyard. Trejo furnished the van's license plate number to the police. It was Seda's van.

As the result of the identifications, police officers on the Torrance Police Department "crime impact team" placed Seda under surveillance. The surveillance lasted for approximately 47 hours and ended with Seda's arrest. During the surveillance, police observed Seda drive to a store and purchase bolt cutters. He drove to an alley behind the residence of Margaret Lee where her detached garage was located. Police observed Seda break the lock on the garage door with his bolt cutters, but Seda did not enter the garage.

Seda then drove to the residence of Perlido Pulido. Police saw Seda park near Pulido's garage, get out of the van, and drive off shortly thereafter. The garage door lock had been cut, but Pulido reported nothing missing.

Seda then drove to the residence of Alexandre Mine. Police observed Seda stop in the driveway, break the lock on the door of the attached garage, and enter the garage. Mine could not determine whether anything had been taken out of the garage.

Shortly thereafter, the police decided to arrest Seda and Police Detective Martin McGee and Sergeant Lloyd DeGonia followed Seda, who was driving his van.

The officers were in unmarked cars. McGee drove to the side of Seda's van, identified himself as a police officer, and told Seda that he was under arrest. McGee displayed his badge and handgun and was wearing a blue shirt with the word "Police" on the back. McGee got out of his car and repeated his warning and order several times. Seda accelerated and smashed into Sergeant DeGonia's car, which had stopped in front of Seda's van. DeGonia was uninjured but the car was severely damaged. Seda was arrested.

The police found bolt cutters and a baseball cap in the van and two bicycles, including one stolen from Nunez, in Seda's yard. Police officers testified that only Seda drove the van during the surveillance and that he often wore a baseball cap.

Seda was charged with first degree residential burglary of the Spector, Trejo, and Mine garages, and attempted second degree burglary of the Lee and Pulido garages. He was also charged with assault with a deadly weapon by force likely to produce great bodily injury on a peace officer. The jury found him guilty of the three counts of residential burglary, one count of attempted second degree burglary, and assault with a deadly weapon. Seda was acquitted of the Pulido attempted burglary.

In a bifurcated trial, the court found true allegations that Seda suffered two prior serious or violent felony convictions for purposes of the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and section 667, subdivision (a). Based on the same convictions, the court found that Seda had not remained free of prison custody for five years. (§ 667.5, subd. (b).) Seda was sentenced to a prison term of 110 years to life, consisting of 4 consecutive 25-years-to-life terms for 2 of the burglaries, the attempted burglary, and the assault with a deadly weapon. A concurrent 25-years-to-life term was imposed for the third burglary, and two 5-year enhancements were imposed under section 667, subdivision (a). Section 667.5, subdivision (b) enhancements were stricken.

DISCUSSION

Claim of Erroneous Admission of Evidence Waived

Three police officers who participated in the surveillance and arrest of Seda testified at trial. After stating that they were assigned to the "crime impact team," the

officers were asked to describe the team's function. Officer Dennis Brady and Sergeant DeGonia testified that the crime impact team targets persons suspected of being "career criminals." Detective McGee testified that the team investigates crime trends, "repeat offenders," and persons who commit "serial crimes."²

Seda contends that this testimony was character evidence (Evid. Code, § 1101, subd. (a)), and that he was denied a fair trial by its admission. Seda argues that the testimony permitted the jury to infer he was a career criminal with a disposition to commit crimes such as burglary and robbery. We conclude that, because it was not raised in the trial court, Seda has waived this claim.

A claim that a defendant was prejudiced by the improper admission of evidence is not preserved for appeal unless a specific and timely objection has been made in the trial court. (See, e.g., *People v. Anderson* (2001) 25 Cal.4th 543, 586; *People v. McPeters* (1992) 2 Cal.4th 1148, 1188.) The waiver rule applies even if the evidence is challenged on constitutional grounds. (*People v. Ramos* (1997) 15 Cal.4th 1133, 1170; *McPeters*, at p. 1188.) The only exception is where a timely objection could not have cured the harm. (*People v. Arias* (1996) 13 Cal.4th 92, 159; *People v. Hill* (1998) 17 Cal.4th 800, 820-821.)

Seda did not object to any of the testimony by Officer Brady and Sergeant DeGonia regarding the function of the crime impact team. And, there is nothing in the record to suggest that the trial court discouraged such objections or that an objection could not have cured any harm from the testimony.

² Each of the three officers was asked what the crime impact team does. The following is the relevant testimony in its entirety: (1) Officer Brady testified that "[w]hat we do as a team is we go out and perform surveillances on suspects who we believe may be involved in crimes, particularly career criminals who commit burglaries, robberies, murders. We get information from detectives or through only follow-up investigation, and we go out and follow these individuals." (2) Sergeant DeGonia testified that the "crime impact team is a . . . felony apprehension team that targets career criminals, trying to locate them, observe them in criminal activity, and take them into custody." (3) Detective McGee testified that "we also try and locate and target people that are doing serial crimes. If we're having a rash of a certain type of crime, burglaries or robberies, we try and identify those crime trends and try and locate those suspects." Detective McGee also answered "Yes" when asked whether one of his missions is "repeated offenders."

Seda did object to the final portion of Detective McGee's testimony regarding the crime impact team, but failed to specify due process, Evidence Code section 1101, or any other ground for the objection. A judgment may not be reversed "by reason of the erroneous admission of evidence" unless there was a timely objection "so stated as to make clear the specific ground of the objection" and the reviewing court concludes that the evidence should have been excluded "on the ground stated." (Evid. Code, § 353; see also *People v. Morris* (1991) 53 Cal.3d 152, 187-188, overruled on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.)

An objection on the ground of relevance is insufficient to preserve a claim based on improper admission of character evidence. (*People v. Thomas* (1992) 2 Cal.4th 489, 519-520; *People v. Clark* (1992) 3 Cal.4th 41, 126; *People v. Benson* (1990) 52 Cal.3d 754, 788.) An objection without specification of any ground similarly fails to preserve the claim for appeal. Moreover, although counsel asked to approach the bench after his objection to Detective McGee's testimony was overruled, counsel offered no reason for a bench conference.

Seda asserts that testimony that Seda concealed an object in his waistband when he purchased bolt cutters is also inadmissible character evidence. Again, Seda's relevance objection did not preserve the claim, and Seda made no relevance argument.

Ineffective Assistance of Counsel

Although waived as an evidentiary claim, we discuss the substance of Seda's argument in evaluating his contention that he received ineffective assistance of counsel when his trial attorney failed to object to the career criminal testimony as inadmissible character evidence. (See *People v. Welch* (1999) 20 Cal.4th 701, 759-760.)

To prevail on an ineffective assistance claim, a defendant must demonstrate both deficient performance and prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687; *People v. Ledesma* (1987) 43 Cal.3d 171, 217-218.) To establish deficient performance, Seda must show that counsel's performance fell below an objective standard of professional competence. (*Strickland*, at pp. 687-688; *People v. Kipp* (1998) 18 Cal.4th 349, 366.) To establish prejudice, a defendant must show that it is reasonably

probable that the verdict would have been different but for counsel's errors. (See *Strickland*, at p. 694; *Kipp*, at p. 374.) We conclude that, although the challenged evidence was inadmissible, Seda has failed to establish either of the elements of an ineffective assistance of counsel claim.

"[E]vidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion." (Evid. Code, § 1101, subd. (a).) Here, testimony that the crime impact team targeted career criminals permitted the jury to infer that, as a target of that team, Seda was a career criminal. A career criminal is necessarily a person with a disposition to commit crimes based on the commission of crimes in the past. Accordingly, the career criminal testimony, including McGee's reference to serial crimes and repeat offenders, was inadmissible character evidence because it was offered to support an inference that Seda was guilty of the charged offenses based on a character trait.

The Attorney General asserts that the testimony is admissible to show the circumstances of the surveillance, but fails to identify any relevant circumstance. Evidence is relevant if it "tends, logically, naturally, or by reasonable inference to establish a material fact" (*People v. Yu* (1983) 143 Cal.App.3d 358, 376.) Even if evidence of the reason Seda was placed under surveillance had been relevant, the reason for the surveillance is different from the reason for the crime impact team. Undisputable evidence shows that the surveillance was undertaken because Seda owned the van used in the Spector and Trejo/Nunez burglaries, not because Seda qualified as a career criminal. Also, without identifying particular uncharged offenses, the testimony could not be admissible for any of the reasons set forth in Evidence Code section 1101, subdivision (b), such as motive, opportunity, intent, or plan. The evidence resolved no factual issue. Its purpose was clearly to show Seda's propensity to commit crimes, and an objection by defense counsel would have had merit.

Nevertheless, counsel's failure to object to the evidence does not establish that his representation fell below an objective standard of attorney competence. The

decision whether to object to the admission of evidence falls within the realm of trial tactics and strategy, and even the failure to object to inadmissible evidence is often a tactical decision entitled to deference by the reviewing court. (*People v. Majors* (1998) 18 Cal.4th 385, 403.) Where the record does not disclose the reasons for counsel's action, we will reject an ineffective assistance claim unless the record affirmatively discloses the lack of a rational tactical purpose for the act or omission. (*People v. Ray* (1996) 13 Cal.4th 313, 349.) Here, once the testimony had been elicited, counsel may have remained silent to avoid drawing juror attention to remarks that consumed only a brief moment in the trial.

Assuming counsel's failure to object to the career criminal testimony fell below an objective standard of attorney competence, Seda fails to show a reasonable probability that, but for counsel's error, the outcome of the trial would have been more favorable to Seda. (*Strickland v. Washington, supra*, 466 U. S. at p. 694; *People v. Lucas* (1995) 12 Cal.4th 415, 436.) A reasonable probability is a probability that undermines confidence in the adversarial process to the extent that the trial cannot be relied on as having produced a just result. (*Strickland*, at pp. 686, 694.)

Here, there was overwhelming evidence of Seda's guilt. Witnesses closely and convincingly tied Seda to the first two burglaries, and police officers personally witnessed Seda commit the third burglary, the attempted burglary and the assault with a deadly weapon. Also Seda presented virtually no defense to undermine the extensive and comprehensive eyewitness evidence. In light of the overwhelming and undisputed evidence, we cannot say that counsel was constitutionally ineffective in his attempt to make the best of a bad situation.

Moreover, the jury demonstrated its focus on admissible evidence that Seda committed the charged offenses when it reached a not guilty verdict on the attempted burglary count where the police did not observe the commission of the offense. If the jury was influenced by the career criminal testimony, it is unlikely that it would have distinguished between that attempted burglary and the other charged offenses.

Cruel and Unusual Punishment

Seda contends his 110-years-to-life sentence constitutes cruel and unusual punishment under the federal and state Constitutions. (U.S. Const., Eighth Amend.; Cal. Const., art. I, § 17.) We reject his contention. The United States Supreme Court and several California cases have upheld the constitutionality of California sentencing statutes and affirmed life sentences for third strike offenders. (*Ewing v. California* (Mar. 5, 2003, No. 01-6978) ___ U.S. ___ [2003 D.A.R. 2490]; *Lockyer v. Andrade* (Mar. 5, 2003, No. 01-1127) ___ U.S. ___ [2003 D.A.R. 2484]; *People v. Martinez* (1999) 71 Cal.App.4th 1502, 1511.)

A punishment may be cruel and unusual if it is so disproportionate to the crime that it "shocks the conscience and offends fundamental notions of human dignity." (*In re Lynch* (1972) 8 Cal.3d 410, 424, fn. omitted; Cal. Const., art. I, § 17.) Considering his recidivist history, Seda's sentence is reasonably proportional to his past and present offenses (*In re Lynch*, at pp. 425-427.) His current offenses include multiple burglaries and assault with a deadly weapon, all of which are serious felonies. (§ 1192.7, subds. (c)(11), (c)(18)). He also has an extensive criminal record, including multiple prior convictions for burglary.

For the same reasons, Seda's punishment does not violate the Eighth Amendment of the federal Constitution. Federal law permits imposition of longer sentences on recidivists and, although federal law applies a proportionality test, successful challenges to the proportionality of non-capital sentences are extremely rare. (See *Ewing v. California*, *supra*, 2003 D.A.R. at p. 2493.)

The judgment is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

Mark S. Arnold, Judge
Superior Court County of Los Angeles

J. Frank McCabe, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Louis W. Karlin, Deputy Attorney General, for Plaintiff and Respondent.